

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3922 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI PREMCHANDBHAI JADAVIYA

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner
MR SS PATEL AGP for Respondent No. 1
MR DN PATEL for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/08/1999

ORAL JUDGEMENT

Heard the learned advocates appearing for the
respective parties. The learned advocate Mr. Pahwa is
permitted to place the impugned order on the records of
the matter.

The petitioner challenges the order of preventive
detention dated 22nd April, 1999, made by the District

Magistrate, Dahod, under the powers conferred upon him under sub-section (2) of section -3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the Act').

The petitioner is running a fair price shop and is alleged to have committed several irregularities disrupting the supply of essential commodities to the card holders.

It is contended that the Detaining Authority as well as the Central Government have failed to deal with the representation made by the petitioner, through his advocate, expeditiously, and the continued detention of the petitioner is, therefore, vitiated. The facts undisputed are : the representation was made to the District Magistrate on 5th May, 1999, and was received by him on 10th May, 1999. The District Magistrate had considered the said representation and had rejected the same on merits on 13th May, 1999. He thereafter forwarded the representation to the State Government on 15th May, 1999. It is contended that the order of detention was confirmed by the State Government earlier on 3rd May, 1999, and the District Magistrate having become functus-officio, ought not to have considered the representation on merits. He was duty bound to promptly forward the same to the State Government which he failed to do. Having received the said representation on 10th May, 1999, he did not forward the same to the State Government till 15th May, 1999. Further, the representation made to the Central Government, was received by it on 7th May, 1999. In the meantime, the Central Government had received the entire records of the matter along with the comments of the State Government on 6th May, 1999. In spite of the receipt of the said records and comments of the State Government, the Central Government, under its communication dated 10th May, 1999, sought for the comments of the State Government which was received on 21st May, 1999, and the same was rejected on 26th May, 1999. The period of five days spent in considering the representation i.e. from 21st May, 1999 to 26th May, 1999 has not been explained. Besides, the Central Government has failed to satisfy that there was need for calling for further comments from the State Government, or that the comments were sought for after proper application of mind. In support of his contention, Mr. Pahwa has relied upon the judgment of the Hon'ble Supreme Court in the matter of R.PAULSAMI VS UNION OF INDIA & ORS ({1999} 4, SCC, 415).

The petition is contested by the learned counsel appearing for the State Government and the Central Government respectively. It is contended that the District Magistrate having considered the representation and having rejected the same, had promptly forwarded it to the State Government within two days. Therefore, it can not be said to have been unduly delayed. Further, the learned counsel Mr. Patel appearing for the Central Government has contended that the concerned officer is required to peruse the records and decide the representation after proper application of mind and if that process requires five days, the same can not be said to be unduly delayed. In support of his contention, he has relied upon the judgment in the matter of NOOR SALMAN MAKANI VS UNION OF INDIA & ORS (JT 1993 {6} SC, 491).

In the matter of R.Paulsami (supra), the court observed that the order for calling for comments of the sponsoring authority was not passed by any of the officer empowered by the orders of the Minister dated 7-7-1995. The court, therefore, held that the representation was dealt with in a routine manner and there was no application of mind by the competent officer as to whether it was necessary to call for the comments of the sponsoring authority. In other words, the delay being uncalled for was regarded as unreasonable and fatal. In the matter of Noor Salman (supra), as discussed in paragraph-3 of the judgment, the representation was under active consideration in the concerned office at various level from 2nd November, 1992 to 6th November, 1992. Considering these facts, the court was of the view that five days' delay was not undue. In the present case, the Central Government has failed to explain how the representation was dealt with between the period from 21st May, 1999 to 26th May, 1999. The affidavit made on behalf of the Central Government does not disclose that the representation was under active consideration during these days, or that it could not be considered for some valid reason. In absence of any explanation coming forth, the delay can not be said to be reasonable. In the matter of Noor Salman (supra), the affidavit did disclose that during the five days in question, the representation was under consideration by one or the other officer authorised to do so. Besides, it is not born out of the record that even after receiving the entire records from the State Government and the remarks of the State Government, the concerned officer had to call for the further comments of the State Government. It is also not disclosed that the authorised officer had applied his mind before calling for the comments of the State Government. In absence of such detail, the period spent

from 10th May, 1999 to 21st May, 1999, in view of the judgment in the matter of R.Paulsami (supra), should be regarded as uncalled for, unreasonable and fatal. Further, there is one more reason why the inaction on the part of the District Magistrate should be fatal to the impugned order. The District Magistrate having received the representation on 10th May, 1999, ought to have immediately forwarded the same to the State Government. However, he has not done so till 15th May, 1999. Thus, five days' delay in forwarding the representation to the State Government and the act of the District Magistrate in considering the representation on merits and rejecting the same, both are deprecable. The order of detention having been confirmed by the State Government, the District Magistrate ought not to have decided the representation on merits. Such an exercise is likely to affect the decision of the State Government that may be taken on the representation. I am, therefore, of the view that the action of the District Magistrate in rejecting the representation after the detention order having been confirmed by the State Government and in not forwarding the representation to the State Government for five days, both are fatal to the order of detention.

For the aforesaid reasons the petition is allowed. The order dated 22nd April, 1999 made by the District Magistrate, Dahod, is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI